IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CASE NO. 1D20-1117

SHAUN P. MURPHY,

Appellant/Former Husband,

vs. L.T. Case No.: 16-2019-DR-007147

CLAUDIA A. MURPHY,

Appellee/Former Wife.

_____/

ON APPEAL FROM THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes

Rules

STATEMENT OF THE CASE AND FACTS

This appeal arises from the trial court's non-final order denying the Former Husband's sworn motion to dismiss for lack of personal jurisdiction. (Appendix ("App.") 76-82.)

Former Husband, Shaun P. Murphy, and Former Wife, Claudia A. Murphy, were divorced on November 19, 1999, in the State of Hawaii. (App. 8, ¶ 1; App. 12-16; App. 24, ¶ 2; App. 73, ¶ A.) The Hawaiian court entered a Divorce Decree (With Children), which, *inter alia*, addressed the retirement accounts/benefits of the parties. (App. 15.) Paragraph 18(C) of the Hawaiian divorce decree divided the "retirement accounts/benefits of the parties," as follows:

> WIFE IS AWARDED 25% OF HUSBAND[']S FEDERAL RETIREMENT FOR A TERM NOT TO EXCEED TEN (10) YEARS. DFAS CLEVELAND IS DIRECTED TO AUTOMATICALLY WITHHOLD THIS ENTITLEMENT. WIFE WAIVES ANY ADDITIONAL CLAIMS TO ANY FURTHER RETIREMENT BENEFITS UNDER THE USFSPA (97-252, 10 U.S.C. 1408 et seq) THAN THOSE LISTED ABOVE.

(App. 15.)

Almost twenty years later, on September 25, 2019, Former Wife filed her petition to domesticate the Hawaiian divorce decree in Florida. (App. 8-10.) Former Husband was personally served with the summons and petition in North Carolina. (App. 6-7; App. 73, ¶ B.) Former Wife's petition to domesticate was unsworn. (App. 8-10.)

In her petition, Former Wife alleges that she has resided in Florida "continuously since 2010." (App. 9, ¶ 6.) She is a resident of Duval County, where she claims Former Husband "also resided during the last several years." (*Id*.) Neither she nor Former Husband has resided in Hawaii "for approximately twenty years." (App. 9, ¶ 7.)

The petition details the Former Husband's attempts to domesticate the Hawaii divorce decree in Utah in 2004 and 2008. (App. 9, ¶ 4; App. 17-23.) "Notwithstanding the foregoing," Former Wife alleges, "the State of Florida now has jurisdiction over the parties and the subject matter at issue." (App. 9, ¶ 5; *see also* App. 9, ¶ 8 (alleging that "Florida is the appropriate state to exercise personal and subject matter jurisdiction over the parties and matters at issue in this case").) Her petition states:

> The Former Husband has resided in the State of Florida for most of the last ten to eleven years, residing in both the Tampa and Jacksonville areas. The Former Husband owned properties in both of the counties and he may still own property. He recently left the state; however, his continued, substantial and recent residency in the state provides a basis for personal jurisdiction over him.

(App. 9, ¶ 5.)

Former Wife seeks to domesticate the Hawaiian divorce decree to Florida "to resolve the issues regarding the Former Husband's military retirement benefit and Former Wife's award of her marital share thereof." (App. 9, ¶ 8.) According to the Former Wife, paragraph 18(C) of the Hawaiian divorce decree awarded her "25% of

the Former Husband's military pension for a fixed period of ten years." (App. 9, ¶ 2.) Her petition asserts that although she "has been attempting to initiate her entitlement to this award," "DFAS [Defense Finance and Accounting Services] is not able to process the request without clarification of the original Divorce Decree." (*Id*.) She contends the award is "clear therein," but "DFAS is requesting a Clarifying Order regarding the award." (*Id*.)

Former Wife requests that the trial court:

> grant her petition … [and] domesticate the Hawaii Divorce Decree to Duval County, Florida; conduct a hearing and adjudicate/clarify Former Wife's share of Former Husband's military pension; enter a Clarifying Order for DFAS; enter an Order to establish retirement arrears and monies owed to Former Wife and a lump sum payment or payment plan regarding the monies owed to Former Wife; and grant any other relief consi[s]tent with the requests herein.

(App. 10.)

Former Husband filed his sworn motion to dismiss the petition to domesticate on October 24, 2019. A resident of North Carolina. (App. 24, ¶ 3), the Former Husband states that "[i]n the past ten years," he "only has resided in the State of Florida by virtue of his military duty station being located in the State of Florida" (App. 25, ¶ 6.) His duty station "was in Tampa, Florida from January of 2010 until December of 2012 and from July 2017 until February of 2019." (*Id*.) Although Former Husband "briefly owned real property in Florida from July to November of 2017," he "owns no real property in the State of Florida." (*Id*.)

Former Husband asked the trial court to dismiss the Former Wife's petition for lack of personal jurisdiction. He argued the petition lacked sufficient jurisdictional allegations "to allow the Florida Court to exercise its long-arm jurisdiction over [this] non-resident defendant." (App. 24, ¶ 5) For that matter, he added, "[n]one of the provisions of Fla. Stat. §48.193 allow long-arm jurisdiction in this matter." (*Id*.)

Former Husband also explained that the Former Wife's petition attempted to invoke long-arm jurisdiction by alleging that the Former Husband "recently" resided in Florida "for most of the last ten to eleven years" and owned property here. (App. 25, ¶ 5.) Yet because the Former Wife's action to establish the Hawaiian divorce decree is "neither an action to dissolve a marriage nor . . . an independent action for support of dependents" within the meaning of section 48.193(1)(c)5., Florida Statutes, Former Husband is not subject to the Florida courts' jurisdiction. (*Id*. (citing *Yoder v. Yoder*, 363 So. 2d 409 (Fla. 1st DCA 1978)); *see also* App. 23, ¶ 4 (citing, *inter alia*, *Overcash v. Overcash*, 466 So. 2d 1261 (Fla. 2d DCA 1985)).)

Further, Former Husband asked the trial court to dismiss the action for lack of subject matter jurisdiction for three reasons. First, the Hawaiian divorce decree did not reserve jurisdiction to modify the parties' equitable distribution with regard to retirement, or to address issues not adjudicated in the dissolution proceeding. (App. 25, ¶ 7.) Like the state court in Hawaii, the Florida courts lacks jurisdiction to enter

or amend any qualified military orders related to retirement pay. (*Id*.) Second, the Florida courts lack jurisdiction over Former Husband, as a retired service member, to distribute retired pay. (*See* App. 25, ¶ 8 (citing, *inter alia*, 10 U.S.C. § 1408).) Third, the Florida courts lack jurisdiction, based on an untimely-filed motion for rehearing, to "clarify" another court's final judgment. (App. 26, ¶ 9.)

The Former Husband concluded that the Florida courts "lack[] personal jurisdiction over the Former Husband and subject matter jurisdiction over the property settlement of the marriage," (App. 26, ¶ 10.) "The proper forum for this action would be the State of Hawaii and/or North Carolina," instead. (*Id*.)

Former Wife then filed three requests to take judicial notice. The first request, filed November 8, 2019, included pleadings from the Former Husband's 2008 action, filed in Utah to enforce his visitation rights. (App. 30-33.) The second request, filed January 22, 2020, attached certified copies of a general warranty deed showing the Former Husband's purchase of real property in Duval County in 2007, together with a 2011 release of mortgage for that same property. (App. 34-37.) In her third request, filed January 24, 2020, the Former Wife attached certified copies of warranty deeds reflecting the Former Husband's purchase of real property in Hillsborough County in July 2017, and his sale of that same property in December 2017. (App. 38-42.)

The trial court heard the Former Husband's sworn motion to dismiss on February 18, 2020. (App. 28; App. 43-72.) Former Husband argued that as a North Carolina resident, he was not subject to the trial court's exercise of personal jurisdiction. (App. 46.) And, because the Former Wife's action to domesticate the Hawaiian divorce decree was *not* an action to dissolve a marriage or to establish support for dependents, Former Husband explained, he was not subject to Florida's long-arm jurisdiction. (App. 46-47; *see also id*. at 46 (explaining the Former Wife's argument that Former Husband "used to live in the state of Florida preceding the date of the action" was, "loosely translated," an attempt to invoke section 48.193(1)(a)5.).)[1] The First District's opinion in *Yoder* is "right on point." (App. 47.) Former Husband argued:

> In [*Yoder*] the wife was trying to domesticate a Texas judgment to collect her alimony and the husband lived out of state. She served him in Nevada and the [First] DCA said you can't use that provision [subsection (1)(a)5.] of the long-arm statute because it doesn't apply because this is not an action to dissolve a marriage or to establish support for dependen[ts].

(*Id*.)

Additionally, Former Husband explained, Former Wife was required to allege some provision of the long-arm statute to allow for the Florida court's exercise of

[1] Former Husband refers to "subpart E" of section 48.193(1), as cited in *Yoder*. (App. 46.) This former subsection is identical to the current statute, codified as section 48.193(1)(a)5., Florida Statutes. *Compare Yoder*, 363 So. 2d at 410 *with* § 48.193(1)(a)5., Fla. Stat. (2019).

personal jurisdiction. (App. 46-47.) Given the allegations (or lack thereof) in her petition, the trial court lacked jurisdiction as a matter of law. (App. 63.)

Because the Florida courts lack personal and subject matter jurisdiction, Former Husband urged this action would more properly be brought before the court in Hawaii. (App. 47-49.) The earlier-filed action in Utah related to a change of custody and, as even counsel for Former Wife conceded, "had nothing to do with" the present issue before the Florida court. (App. 51.) Utah likely had jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). (App. 49, 51.)

In response, Former Wife asked the trial court to confine its ruling to the four corners of the petition, which she believed adequately alleged personal and subject matter jurisdiction. (App. 52.) She tried to distinguish *Yoder*. (*See* App. 53 (arguing that, despite the petition's use of the term "clarify," "[w]e're not looking to qualify or clarify anything"); *see also* App. 58 (arguing the former husband in *Yoder* "didn't own property in Florida").) According to Former Wife, because her petition was filed "in connection . . . [with] a dissolution of marriage case that was . . . adjudicated back in '99 in Hawaii," she satisfied section 48.193(1)(a)5. (App. 53-54.)

Former Wife also argued that section 48.193(1)(a)3., Florida Statutes, provided an alternative basis for the trial court's exercise of personal jurisdiction. (App. 54.) She urged the trial court to rely on the language of the long-arm statute

allowing for the exercise of jurisdiction arising from an individual's "owning, using, possessing or holding a mortgage or other lien [on] any real property within this state." (*Id*.) She asked the trial court to consider the Former Husband's past ownership of real property in Florida, as shown by two of her requests for judicial notice. (*Id*.) However, Former Wife admitted she was "not filing a petition based on the property." (App. 55.)

Former Wife relied on that same ownership of property to argue for general jurisdiction under the long-arm statute. (App. 55.) Citing the language of section 48.193(2), Former Wife believed "[t]he fact that [Former Husband] owned property here . . . sufficient to warrant the jurisdictional hook of the long-arm statute." (*Id*.) On questioning from the trial court, she conceded that Former Husband ceased owning real property in Florida in 2017—two years before the filing of her petition. (App. 62; *see also id*. at 65-66 (concerns expressed by trial court as to the two-year gap between Former Husband's last contact with Florida and the filing of the Former Wife's petition).)

Acknowledging the "limited" nature of the evidentiary hearing, Former Wife generally referenced "other connections" with Florida. (App. 56.) She claimed "[t]here is electronic communication between the former husband and the former wife regarding this issue," but introduced no evidence. (*Id*.)

According to Former Wife's counsel, his client "had no idea" Former Husband "was in the process of retiring up until the time that she actually filed" the petition; once "she found out, she dutifully hired counsel and . . . proceeded here in Florida citing the long-arm statute." (App. 63.) Former Wife believed she should not have to "chase her former husband yet again to another state, to North Carolina, to try to get this effectuated." (App. 61; *see* App. 66.)

The trial court denied the Former Husband's sworn motion to dismiss. (App. 68.) In its written order, rendered March 5, 2020, the trial court found that although Former Husband previously lived in Florida, "the parties agreed" he "relocated to North Carolina before Former Wife filed and served Former Husband" with the petition. (App. 74, ¶ D.) Additionally, the order noted Former Husband's assertion that he was "only present in Florida because of his military obligations." (*Id*.)

The trial court also ruled that the parties had agreed Former Husband "previously owned real property and held a mortgage in Florida." (App. 74, ¶ D.) The order made no findings reflecting the Former Husband's current ownership of any real property in Florida. (*See id*.) Stating that its review was "confine[d] . . . to the four corners of the Petition to Domesticate," and accepting the petition's allegations as true, the trial court concluded that Former Wife adequately alleged personal and subject matter jurisdiction. (App. 74, ¶ E.) It denied the sworn motion to dismiss and directed Former Husband to file a responsive pleading. (*Id*.)

Former Husband timely filed his notice of appeal of the non-final order on April 1, 2020. (App. 76-82.) *See* Fla. R. App. P. 9.130(a)(3)(C)(i) (providing that orders determining personal jurisdiction are appealable, non-final orders).

SUMMARY OF ARGUMENT

The trial court erred in denying the Former Husband's sworn motion to dismiss for lack of personal jurisdiction. The Former Wife's jurisdictional allegations are legally insufficient to establish jurisdiction under any provision of Florida's long-arm statute: section 48.193, Florida Statutes (2019).

The bare allegations of the Former Wife's petition reflect an attempt to track the language of section 48.193(1)(a)5., Florida Statutes. Yet because the petition to domesticate the Hawaiian divorce decree is not "a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage," or "an independent action for support of dependents," this subsection of Florida's long-arm statute does not apply. *See Yoder v. Yoder*, 363 So. 2d 409, 410 (Fla. 1st DCA 1978).

Moreover, neither of the additional grounds argued by Former Wife at the February 18, 2020 hearing authorizes the exercise of Florida's long-arm jurisdiction over Former Husband. Given that the Former Wife's cause of action is unconnected to the Former Husband's past ownership of real property in Florida, specific personal jurisdiction does not arise under subsection (1)(a)3. of the long-arm statute. *See* §

48.193(1)(a)3., Fla. Stat. Former Wife's petition also failed to allege the "substantial and not isolated" activity required to establish *general* personal jurisdiction under subsection (2) of Florida's long-arm statute. § 48.193(2), Fla. Stat. Because Former Husband is not subject to specific or general personal jurisdiction under Florida's long-arm statute, his sworn motion to dismiss should have been granted, and the Former Wife's petition dismissed with prejudice.

Even if the Former Wife's petition adequately stated a basis for jurisdiction under the long-arm statute (which it did not), the trial court erred in refusing to dismiss for lack of personal jurisdiction. Former Husband's sworn motion to dismiss sufficiently refuted the Former Wife's jurisdictional allegations. Once the burden shifted back to Former Wife, she was required to elicit sworn proof establishing jurisdiction over the non-resident Former Husband. This she failed to do. Notwithstanding the filing of Former Wife's requests for judicial notice, the evidence was insufficient to allow for the exercise of long-arm jurisdiction. Again, Former Husband is entitled to reversal of the trial court's order denying his sworn motion to dismiss. On remand, Former Wife's petition should be dismissed, without leave to amend.

ARGUMENT

I. The jurisdictional allegations of the Former Wife's petition are legally insufficient to establish long-arm jurisdiction over the non-resident Former Husband.

Standard of review. "An order denying a motion to dismiss for lack of personal jurisdiction is reviewed *de novo*." *LaFreniere v. Craig-Myers*, 264 So. 3d 232, 236 (Fla. 1st DCA 2018) (citing *Wendt v. Horowitz*, 822 So. 2d 1252, 1256 (Fla. 2002)). Florida's long-arm statute is "strictly construed, in order to guarantee compliance with due process requirements." *Id*. (quoting *Aetna Life & Cas. Co. v. Thermo-O-Disc, Inc.*, 488 So. 2d 83, 87 (Fla. 1st DCA 1986)). "The burden of pleading jurisdiction lies with the plaintiff." *Jaffe & Hough, P.C. v. Baine*, 29 So. 3d 456, 458 (Fla. 2d DCA 2010) (citing *Hilltopper Holding Corp. v. Estate of Cutchin ex rel. Engle*, 955 So. 2d 598, 601 (Fla. 2d DCA 2007)).

The Former Wife's petition did not "allege sufficient jurisdictional facts to bring the action within the ambit" of Florida's long-arm statute. *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989). Under Florida law, a plaintiff may allege the language of section 48.193, Florida Statutes, without supporting facts or, alternatively, set forth specific facts in her petition to show that the defendant's acts are encompassed by Florida's long-arm statute. *E.g.*, *Jaffe & Hough*, 29 So. 3d at 458-59. Here, Former Wife did neither. Because Former Wife did not—and, indeed, cannot—satisfy her burden of pleading jurisdiction under Florida's long-arm statute,

the trial court should have granted the Former Husband's sworn motion to dismiss. *See, e.g.*, *Ernie Passeos, Inc. v. O'Halloran*, 855 So. 2d 106, 108 (Fla. 2d DCA 2003) (finding that lack of sufficient jurisdictional facts pled under the long-arm statute alleviated the need to reach the additional issue of whether sufficient "minimum contacts" satisfied federal due process requirements).

A. Section 48.193(1)(a)5., by definition, does not apply to the petition to domesticate the 1999 Hawaiian divorce decree. Former Wife's action to clarify or adjudicate her share, if any, of the Former Husband's military pension was not "an action to dissolve a marriage" or "an independent action for support of dependents."

First, Former Wife is not entitled to rely on subsection (a)(1)5. of Florida's long-arm statute to establish jurisdiction. Section 48.193(1)(a) provides, in relevant part:

> [a] person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself . . . to the jurisdiction of the courts of this state for any cause of action arising from any of the following acts:
>
> 5. With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabitating during that time or not.

§ 48.193(1)(a)5., Fla. Stat. (2019).

In her petition, Former Wife seeks to domesticate the 1999 Hawaiian divorce decree in Florida, and to clarify the Hawaiian court's equitable distribution of the

Former Husband's retirement. (App. 8-10.) Admitting that Former Husband "recently left" Florida, the Former Wife's petition alleges that his "continued, substantial and recent residency in the state" nonetheless "provide[s] a basis for personal jurisdiction." (App. 9, ¶ 5.) Loosely translated, these allegations reflect an attempt by Former Wife to invoke section 48.193(1)(a)5. (*See id*; *see also* App. 46-47.)

Yet jurisdiction over Former Husband does not arise under this provision of Florida's long-arm statute. Notwithstanding that Former Husband may have "resided in this state preceding the commencement of the action," § 48.193(1)(a)5., Fla. Stat. (2019),[2] the Former Wife's petition to domesticate the Hawaiian divorce decree is *not*, by definition, "an action to dissolve a marriage" or "an independent action for support of dependents." *Yoder v. Yoder*, 363 So. 2d 409, 410 (Fla. 1st DCA 1978) (interpreting § 48.193(1)(e), Fla. Stat. (1977), now codified as § 48.193(1)(a)5., Fla. Stat. (2019)).

Simply stated, section 48.193(a)(1)5. does not apply to the Former Wife's cause of action. *See Yoder*, 363 So. 2d at 410; *accord Overcash v. Overcash*, 466 So. 2d 1261, 1262 (Fla. 2d DCA 1985). In denying the Former Husband's sworn motion to dismiss, the trial court erred as a matter of law. *See Yoder*, 363 So. 2d at

[2] Former Wife cannot show that the parties, who were divorced in 1999, "maintain[ed] a matrimonial domicile" in Florida "at the time of the commencement of this action." § 48.193(1)(a)5., Fla. Stat.

410; *accord Overcash*, 466 So. 2d at 1262; *see also Schroeder v. Schroeder*, 430 So. 2d 604, 605-6 (Fla. 4th DCA 1983) (affirming dismissal of claim for alimony unconnected to dissolution proceeding; Florida court lacked personal jurisdiction over non-resident former husband); *Soule v. Rosasco-Soule*, 386 So. 2d 862, 863 (Fla. 1st DCA 1980) (affirming dismissal of action against out-of-state spouse for alimony unconnected with dissolution; specific personal jurisdiction requires cause of action arising from acts or omissions in Florida).

The First District's decision in *Yoder* is directly on point. In *Yoder*, the former wife filed an action to domesticate a Texas divorce decree in Florida. 363 So. 2d at 409. She sought to establish the Texas decree as a Florida judgment, adjudicate the alimony arrearage, and enforce the judgment against her former husband, who was no longer a Florida resident. *Id*. Finding Florida's long-arm statute inapplicable, the trial court quashed service of process on the former husband. *Id*. at 409-10. The former wife appealed. *Id*.

On appeal, the First District affirmed the trial court's order quashing service of process on the non-resident former husband. *Id*. at 410. The *Yoder* court interpreted the same language of Florida's long-arm statute now relied on by the Former Wife. *See id*. (citing § 48.193(1)(e), Fla. Stat. (1977), now codified as § 48.193(1)(a)5., Fla. Stat. (2019)). In ruling the statute "clearly inapplicable," the First District explained that "the action to establish the Texas decree is neither an

action to dissolve a marriage nor it is an independent action for support of dependents." *Id*. Accordingly, the *Yoder* court concluded, jurisdiction "cannot be obtained" over the former husband. *Id*.

Similarly, in *Overcash*, the Second District followed *Yoder* to find that the Florida courts lacked personal jurisdiction over a non-resident former husband. 466 So. 2d at 1262. The former wife in *Overcash*—like the Former Wife here—sought to establish a foreign divorce decree as a Florida judgment. *See id*. "To the extent that the wife was seeking enforcement of some part of the foreign decree," the *Overcash* court reasoned, Florida's long-arm statute did not apply. *Id*. Given the Florida court's lack of personal jurisdiction, the Second District reversed denial of the non-resident former husband's motion to dismiss. *Id*.

This Court should reach the same result. The Former Wife's petition to domesticate the Hawaiian divorce decree—and to clarify or adjudicate her rights, if any, to equitable distribution of the Former Husband's retirement benefits (App. 9, ¶ 8 & App. 10)—is not "an action to dissolve a marriage" or "an independent action for support of dependents." *Yoder*, 363 So. 2d at 410. Strictly construed, the language of section 48.193(1)(a)5. does not authorize the exercise of long-arm jurisdiction over the non-resident Former Husband.

Even if all the petition's allegations are accepted as true, Former Wife failed to sufficiently state a basis for the trial court's exercise of specific personal

jurisdiction over the Former Husband. *See Yoder*, 363 So. 2d at 410. The trial court erred as a matter of law in denying the Former Husband's sworn motion to dismiss. *See Overcash*, 466 So. 2d at 1262; *Yoder*, 363 So. 2d at 410; *see also Schroeder*, 430 So. 2d at 605-6 (affirming dismissal of claim for alimony not part of dissolution proceeding, and finding Florida trial court lacked personal jurisdiction over non-resident former husband); *Soule*, 386 So. 2d at 863 (affirming dismissal of action against out-of-state spouse for alimony unconnected with dissolution).

B. Former Wife did not sufficiently plead any alternative basis under Florida's long-arm statute that would subject Former Husband to personal jurisdiction in Florida, whether specific or general.

Moreover, Former Husband is not subject to the trial court's exercise of personal jurisdiction under either of the additional grounds argued by Former Wife at the February 18, 2020 hearing. The trial court again erred as a matter of law in denying the Former Husband's motion to dismiss for lack of personal jurisdiction.

1. Because the Former Wife's cause of action does not arise from the Former Husband's past ownership of real property in Florida, specific personal jurisdiction does not exist under section 48.193(1)(a)3., Florida Statutes.

At the hearing on the Former Husband's sworn motion to dismiss, the Former Wife explained that Former Husband had previously owned real property in Florida. This, she argued, meant the trial court could exercise specific personal jurisdiction under section 48.193(1)(a)3., Florida Statutes. (App. 54.) This is incorrect.

The provisions of Florida's long-arm statute governing specific jurisdiction "expressly require allegations *both*: (i) that the defendant does one of the enumerated acts within Florida, *and* (ii) that the plaintiff's cause of action 'arise from' one of the enumerated acts occurring in Florida." *Banco de Los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, (Fla. 3d DCA 2018); *see also Aegis Defense Servs. v. Gilbert*, 222 So. 3d 656, 661 (Fla. 5th DCA 2017) ("Specific jurisdiction requires a connection or 'connexity' between the enumerated activity in Florida and the cause of action."). This requirement of "connexity" is not met here.

Section 48.193(1)(a)3., Florida Statutes, confers jurisdiction over any person "[o]wning, using, possession, or holding a mortgage or other lien on any real property within this state" only if the cause of action arises from that ownership. § 48.193(1)(a)3., Fla. Stat. (2019) (subjecting a person to jurisdiction "for any cause of action arising from" the acts listed in subsection (1)(a)); *see Dyck-O'Neal, Inc. v. Rojas*, 197 So. 3d 1200, 1202-3 (Fla. 5th DCA 2016) (to invoke section 48.193(1)(a)3., the cause of action must arise from the ownership of real property in Florida).[3] "By itself, ownership of property is insufficient to subject a nonresident jurisdiction to the courts of this state, unless the cause of action [arises] out of such ownership." *Nichols v. Paulucci*, 652 So. 2d 389, 392, n.5 (Fla. 5th DCA 1995);

[3] Notably, in quoting *Dyck-O'Neal* at the February 18, 2020 hearing, Former Wife omitted that part of the opinion interpreting the statute's language to require the cause of action to arise from the non-resident's property ownership. (App. 56.)

accord Forrest v. Forrest, 839 So. 2d 839, 841 (Fla. 4th DCA 2003); *see also Holt v. Wells Fargo Bank, N.A.*, 32 So. 3d 194, 195 (Fla. 4th DCA 2010) (finding that section 48.193(1)(c)'s 1993 amendment, which added the words "holding a mortgage or other lien on," did not eliminate the ownership of real property as a basis for establishing personal jurisdiction when the cause of action arises from that ownership).

Former Wife did not plead any cause of action arising out of the Former Husband's ownership of real property. (*See* App. 8-10.) She readily admitted that she was "not filing a petition based on the property." (App. 55.) Instead, Former Wife petitioned to domesticate the parties' Hawaiian divorce decree, seeking to "resolve the issues regarding the Former Husband's military retirement benefit" (App. 9, ¶ 8), and to "adjudicate" the Former Wife's share, if any, in that military pension (App. 10).

Former Wife cannot satisfy the connexity requirement. Notwithstanding that Former Husband may have once owned real property in Florida (App. 9, ¶ 5; App. 34-37, 38-42), the Former Wife's cause of action does not arise from that ownership. Former Husband is not subject to the Florida court's exercise of specific personal jurisdiction under subsection (1)(a)3. of the long-arm statute. *See, e.g.*, *Forrest*, 839 So. 2d at 841.

2. Former Wife fails to establish any basis for the Florida court's exercise of general personal jurisdiction over Former Husband.

Additionally, at the February 18, 2020 hearing, Former Wife urged the trial court to exercise *general* personal jurisdiction over Former Husband. Citing section 48.193(2), Florida Statutes, Former Wife believed the Former Husband's past ownership of property in Florida enough "to warrant the jurisdictional hook of the long-arm statute"—even though, she admitted, "we're not filing a petition based on the property." (App. 55.)

Again, Former Wife is incorrect. Her petition failed to adequately plead any basis for the trial court's exercise of general personal jurisdiction over Former Husband. *See* § 48.193(2), Fla. Stat. (2019). Nor can she meet her jurisdictional burden.

Section 48.193(2), Florida Statutes, provides that a non-resident defendant who "is engaged in substantial and not isolated activity within this state" is subject to jurisdiction in Florida "whether or not the claim arises from that activity." § 48.193(2), Fla. Stat. Under the United States Supreme Court's decision in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), "substantial and not isolated activity" means activity that is "continuous and systematic," such that the defendant can properly be considered "present" in the forum. *Am. Overseas Marine Corp. v. Patterson*, 632 So. 2d 1124, 1127, 1128 (Fla.

1st DCA 1994) (quoting *Helicopteros*, 466 U.S. at 417). More recently, the Supreme Court has heightened the constitutional due process standards for exercising general jurisdiction. *See, e.g.*, *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1134 (Fla. 3d DCA 2018) (citing *Daimler AG v. Bauman*, 471 U.S. 117 (2014)).

The requirements needed to establish general jurisdiction create a "much higher threshold" than the "minimum contacts" test of specific jurisdiction. *Am. Overseas Marine Corp.*, 632 So. 2d at 1127-28 (citing *Reliance Steel Prods. Co. v. Watson, ESS, Marshall & Enggas*, 675 F.2d 587, 589 (3rd Cir. 1982)); *see also Canale v. Rubin*, 20 So. 3d 463, 466 (Fla. 2d DCA 2009) ("General jurisdiction requires far more wide-ranging contacts with the forum state than specific jurisdiction, and it is thus more difficult to establish.").

Former Wife cannot satisfy the requirements for general personal jurisdiction. Nowhere in her petition did she attempt to track the relevant jurisdictional language of section 48.193(2). (*See generally* App. 8-10.) *Cf. Canale*, 20 So. 3d at 466 (finding complaint that tracked the long-arm statute met plaintiffs' initial burden of pleading jurisdiction; specifically, allegations that defendants "are subject to personal jurisdiction in Florida for having engaged in substantial and not isolated activity within the State pursuant to F.S. 48.193(2)"). Instead, Former Wife simply stated that the Former Husband's "continued, substantial and recent residency in the state

provide[s] a basis for personal jurisdiction." (App. 9, ¶ 5.) This represents nothing more than the Former Wife's unsuccessful attempt to invoke specific jurisdiction under subsection (a)(1)5. of Florida's long-arm statute—which, for reasons already explained, does not apply. (*See supra*, at Argument I(A).)

Former Wife also failed to allege specific facts establishing that Former Husband is subject to the trial court's exercise of general personal jurisdiction under section 48.193(2). (*See* App. 9, ¶ 5). For instance, while Former Wife asserts in her petition that Former Husband "has resided" in Florida "for most of the last ten to eleven years," she admits that he "recently left the state." (App. 9, ¶ 5). Thus, Former Wife conceded—and the trial court found—that Former Husband is not a Florida resident. (*See id*.; App. 25, ¶ 6 (stating that Former Husband resided in Florida by virtue of his military duty station from January 2010 until December 2012, and from July 2017 until February 2019); *see also* App. 74, ¶ D ("The parties agree Former Husband relocated to North Carolina before Former Wife filed and served Former Husband with her Petition to Domesticate.").) Her petition alleges that Former Husband previously "owned properties" in the Tampa and Jacksonville areas, yet she states no facts demonstrating that he continues to own real property in Florida. (App. 9, ¶ 5.) At best, Former Wife can only speculate that Former Husband "*may* still own property." (*Id*. (emphasis added).) Yet as even the trial court noted, Former Husband last owned real property in Florida in 2017, two years before the filing of

the Former Wife's petition. (App. 62, 65-66; *see also* App. 34-37, 38-42 (Former Wife's requests for judicial notice).)

Certainly, the petition contains no allegations of fact showing that Former Husband is "engaged in substantial and not isolated activity in this state." § 48.193(2), Fla. Stat. (2019); *see Aegis Defense Servs.*, 222 So. 3d at 659-60; *Caiazzo v. Am. Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011); *Trs. of Columbia Univ. v. Ocean World, S.A.*, 12 So. 3d 788, 792 (Fla. 4th DCA 2009). The Former Husband's activities in Florida are *not* extensive and pervasive. *See Aegis Defense Servs.*, 222 So. 3d at 659; *Trs. of Columbia Univ.*, 12 So. 3d at 793.

There is nothing in the Former Wife's petition to show that Former Husband maintains a bank account in Florida, markets or solicits business in Florida, derives revenue in Florida, maintains a residence in Florida, or otherwise owns property in Florida. (App. 8-10.) *See Aegis Defense Servs.*, 222 So. 3d at 660. Former Husband no longer lives in Florida or owns property here.[4] Indeed, Former Husband has only "resided in" the state "by virtue of his military duty station being located" in Florida. (App. 25, ¶ 6.) *Cf. Bofonchik v. Smith*, 622 So. 2d 1355, 1357 n.3 (Fla. 1st DCA 1993) ("It is well established that movement with the military does not necessarily

[4] *See* App. 9, ¶ 5 (affirmatively stating that Former Husband "recently left the state"); App. 62 (conceding Former Husband last owned property in Florida two years before the filing of the petition); App. 74, ¶ D (noting the parties' agreement that Former Husband relocated to North Carolina before the filing of the petition); *see also* App. 34-37, 38-42 (Former Wife's requests for judicial notice).

affect the service member's . . . choice of residence"). Former Wife is unable to allege the kind of "substantial and not isolated" activity "required to establish long-arm jurisdiction under section 48.193(2)." *Aegis Defense Servs.*, 222 So. 3d at 660; *see also Heineken v. Heineken*, 683 So. 2d 194, 196 (Fla. 1st DCA 1996) (finding that limited past contacts, including a Florida driver's license and voter registration card, did not subject defendant to long-arm jurisdiction under section 48.193(2)). Consequently, Former Husband is not subject to general personal jurisdiction under subsection (2) of Florida's long-arm statute.

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The Former Wife's petition is devoid of facts that could give rise to a finding of specific or general personal jurisdiction under Florida's long-arm statute. Former Wife did not satisfy her burden of pleading personal jurisdiction. Indeed, her burden cannot be met as a matter of law. Therefore, the trial court's order denying the Former Husband's sworn motion to dismiss must be reversed and the Former Wife's petition dismissed, without leave to amend. Because Former Husband is not subject to jurisdiction under Florida's long-arm statute, any remand to the trial court for amendment of the Former Wife's petition would be futile. *See, e.g.*, *Hewitt v. Taffee*, 673 So. 2d 929, 933 (Fla. 5th DCA 1996); *see also Ernie Passeos, Inc.*, 855 So. 2d at 108 (reversing and remanding with instructions to dismiss non-resident defendant, "without prejudice to the refiling of the cause in an appropriate jurisdiction").

II. On this record, Former Wife failed to establish any basis for the trial court's exercise of personal jurisdiction under Florida's long-arm statute.

Standard of review. This Court reviews *de novo* the trial court's order denying the Former Husband's sworn motion to dismiss for lack of personal jurisdiction. *LaFreniere v. Craig-Myers*, 264 So. 3d 232, 236 (Fla. 1st DCA 2018) (citing *Wendt v. Horowitz*, 822 So. 2d 1252, 1256 (Fla. 2002)). Facts are derived from affidavits filed in support of the motion to dismiss, together with any transcripts and records submitted in opposition to the motion. *Id*. (citing *Wendt*, 822 So. 2d at 1254).

The facts here demonstrate the absence of personal jurisdiction over Former Husband. Even if the Former Wife's petition adequately pled personal jurisdiction under Florida's long-arm statute—which, of course, it did not—Former Husband is nonetheless entitled to reversal. The record evidence related to jurisdiction, including the Former Husband's sworn motion to dismiss and the Former Wife's requests for judicial notice, established that Former Husband is not subject to personal jurisdiction under Florida's long-arm statute. Former Wife failed to meet her burden of proving jurisdiction.

Venetian Salami establishes guidelines for deciding a defendant's motion to dismiss for lack of personal jurisdiction. 554 So. 2d at 502. "Initially, the plaintiff bears the burden of pleading a basis for jurisdiction under section 48.193." *Hilltopper Holding Corp. v. Estate of Cutchin ex rel. Engle*, 955 So. 2d 598, 601

(Fla. 2d DCA 2007) (citing *Venetian Salami*, 554 So. 2d at 502). If the pleading requirements are met, "the burden shifts to the defendant to file a legally sufficient affidavit or other sworn proof that contests the essential jurisdictional facts of the plaintiff's complaint." *Id*. (citations omitted). "The burden is then placed upon the plaintiff to prove by affidavit the basis upon which jurisdiction may be obtained." *Venetian Salami*, 554 So. 2d at 502; *see also Hilltopper Holding Corp.*, 955 So. 2d at 602 (explaining that "the burden shifts back to the plaintiff to prove by affidavit or other sworn proof that a basis for long-arm jurisdiction exists"). Yet where the plaintiff "fails to come forward with sworn proof to refute the allegations in the defendant's affidavit and to prove jurisdiction," the motion to dismiss "must be granted." *Hilltopper Holding Corp.*, 955 So. 2d at 602.

The trial court's order seemingly adopts the Former Wife's misstatement of the standard, stating that "the Court must confine itself to the four corners of the Petition to Domesticate." (App. 74, ¶ E; *see also* App. 52-53, 63, 69.) Review of the transcript of the February 18, 2020 hearing and the trial court's order, however, reveals that the trial court considered not only the allegations of the Former Wife's petition, but also the Former Husband's sworn motion to dismiss, the Utah filings, and the Florida deeds and mortgage documents filed by the Former Wife. (*See* App. 54, 62, 65-66; App. 73, ¶¶ A-C; App. 74, ¶ D.)

On this record, the trial court reached the wrong conclusion. The evidence,

even if construed in the light most favorable to Former Wife, does not establish a legally sufficient basis for the trial court's exercise of long-arm jurisdiction over the non-resident Former Husband.

The Former Husband's sworn motion to dismiss (App. 24-26) refuted the Former Wife's vague, unsubstantiated, and unsworn allegations that Former Husband's "continued, substantial and recent residency in the state provides a basis for personal jurisdiction" and that "Florida is the appropriate state to exercise" personal jurisdiction. (App. 9, ¶¶ 5, 8.) Importantly, as established by the sworn motion to dismiss, Former Husband has not resided in Florida since February 2019. He is instead a resident of North Carolina. (App. 24, ¶ 2; App. 25, ¶ 6.) The trial court adopted this allegation, finding that "[t]he parties agree Former Husband relocated to North Carolina" before the filing of the Former Wife's petition. (App. 74, ¶ D.) Additionally, Former Husband averred that in the past ten years, he "only has resided in the State of Florida by virtue of his military duty station being located" here. (App. 25, ¶ 6.) He owned real property in Florida from July to November 2017, but presently "owns no real property in the State of Florida." (App. 25, ¶ 6; *see also* App. 62; App. 74, ¶ D.)

In response to the Former Husband's sworn motion, Former Wife filed three requests for judicial notice (App. 30-33, 34-37, 38-42), which the trial court considered (*e.g.*, App. 54, 62; App. 74, ¶ D). None of the Former Wife's filings,

however, established a basis for personal jurisdiction over this non-resident defendant. At best, Former Wife proved only that Former Husband owned real property in Florida from 2007 from 2011, and again in 2017. (App. 35-37, 39-42; *see* App. 62.) Yet as even Former Wife concedes, her cause of action against the Former Husband does not relate to that property ownership. (App. 55; *see also* App. 10 (asking the trial court to domesticate the Hawaiian divorce decree and "adjudicate/clarify Former Wife's share of Former Husband's military pension").)

Proof that Former Husband once lived in Florida, and owned real property in the state, is irrelevant here. The Former Wife's cause of action does not arise from the Former Husband's ownership of real property in Florida. § 48.193(1)(a)3., Fla. Stat. (2019). Nor does the Former Wife's petition to domesticate the 1999 Hawaiian divorce decree—which seeks to clarify her share (if any) of the Former Husband's military retirement (App. 9-10)—arise "in connection with an action to dissolve a marriage" or "with respect to an independent action for support of dependents." § 48.193(1)(a)5., Fla. Stat. (2019). Specific personal jurisdiction does not arise on these facts. Nor does evidence that Former Husband once lived in Florida and owned real property in the state in 2017—two years before the filing of the Former Wife's petition—justify the trial court's exercise of *general* personal jurisdiction under the long-arm statute. Former Wife does not prove that Former Husband is "engaged in substantial and not isolated activity" in Florida. § 48.193(2), Fla. Stat. (2019).

Lastly, to the extent the trial court could be considered to have "confine[d] itself" to the four corners of the Former Wife's petition, this is error. (App. 74, ¶ E.) The Former Husband's legally-sufficient, sworn motion to dismiss shifted the burden to Former Wife to prove jurisdiction under Florida's long-arm statute. *See, e.g.*, *Venetian Salami*, 554 So. 2d at 502; *accord Hilltopper Holding Corp.*, 955 So. 2d at 602. Notwithstanding the filing of Former Wife's requests for judicial notice, her burden was not met.

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Whether the trial court based its ruling on the allegations of the Former Wife's petition, or upon consideration of all the record evidence, it erred in denying the Former Husband's sworn motion to dismiss. Former Wife did not establish any basis for the trial court's exercise of long-arm jurisdiction over the non-resident defendant. Former Husband's sworn motion to dismiss should have been granted, and the Former Wife's petition dismissed without leave to amend. *See, e.g.*, *Hewitt*, 673 So. 2d at 933; *see also Ernie Passeos, Inc.*, 855 So. 2d at 108 (reversing and remanding with instructions to dismiss non-resident defendant, "without prejudice to the refiling of the cause in an appropriate jurisdiction").

CONCLUSION

For the foregoing reasons, the trial court erred as a matter of law in denying the Former Husband's sworn motion to dismiss for lack of personal jurisdiction.

Former Husband is not subject to personal jurisdiction under Florida's long-arm statute. He asks that this Court reverse the trial court's order denying the Former Husband's sworn motion to dismiss and instruct the trial court, on remand, to dismiss the Former Wife's petition, without leave to amend.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed via the Florida Courts E-Filing Portal on October 4, 2022, and an electronic copy has been furnished to the following counsel of record:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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